IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8131 of 2005

For Approval and Signature:

THE HON'BLE MR.JUSTICE SHARAD D.DAVE

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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RAKESHBHAI ISHWARBHAI THAKORE - Petitioner(s)

Versus

STATE OF GUJARAT &3 - Respondent(s)

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Appearance :

MR AR SHAIKH for Petitioner No(s).: 1.

MR PD Bhate, AGP for Respondent No(s).: 1,2,3.

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CORAM :THE HON'BLE MR.JUSTICE SHARAD D.DAVE

Date : 22/06/2005

ORAL JUDGMENT

1. By filing this petition, the petitioner detenu has challenged the detention order dated 14.3.2005 passed by the Police Commissioner, Rajkot City in exercise of the powers conferred upon him under sub-section (1) of Section 3 of the Gujarat Prevention Anti-social Activities Act, 1985 (“the Act” for short), as, the Detaining Authority found that the detenu is a “bootlegger” and is required to be detained under the preventive detention, so that, he may not continue with such type of illegal activities.
2. Along with the detention order, the detenu was also served with the grounds of detention of the same date. In the said grounds, there is a reference to one criminal case which is filed under the provisions of the Bombay Prohibition Act. In the grounds of detention, the statements of certain witnesses have been recorded.
3. At the time of hearing of this petition, it is argued by the learned advocate for the petitioner that only one incident registered against the petitioner under the provisions of the Bombay Prohibition Act and on that basis, the detention order has been passed by the detaining authority. It is submitted that the detaining authority has not examined the genuineness of the incident and credibility of the witnesses, which amounts to non-application of mind on the part of the detaining authority, and, therefore, the order of detention is vitiated. Learned advocate appearing for the petitioner has relied upon the decision in the case of Sohanlal Surajaram Visnoi Vs. State of Gujarat and others, reported in 2004(2) 1051. It is, therefore, requested to quash and set aside the impugned detention order against the petitioner.
4. On the other-hand, Mr.Bhate, learned AGP has tried to support the impugned detention order passed against the petitioner. Affidavit-in-reply is filed on behalf of respondent no.2.
5. Considering the facts and circumstances of the case and considering the judgments referred to above, in my view, it is clear that one criminal case, being CR No.446 of 2005 has been registered on 4.3.2005 with Prohibition Station, Rajkot City under the Bombay Prohibition Act and as a result thereof, the petitioner has been branded as “bootlegger”. Upon bare perusal of the material produced on record, it cannot be said that the activities of the petitioner have affected adversely the maintenance of public order, and, therefore, it cannot be considered to be prejudicial activities in any manner. However, the activities which are said to have been carried out by the petitioner, can normally be covered by the ordinary law to prevent him from carrying on his illegal activities. Under the circumstances, the order of detention is required to be quashed and set aside.

6.In view of what is stated above, the petition is allowed. The order of detention dated 14.3.2005 is quashed and set aside. The detenu Rakeshbhai Ishwarbhai Thakore is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly.

(SHARAD D DAVE, J)

srilatha